

The 24th October, 1977

No. 10663-3 Lab-77/28353. — In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana, is pleased to publish the following award of Shri R.L. Gupta, Sole Arbitrator, in respect of the dispute between the workmen and the management of M/s Ashoka Aloi Steel (Private) Limited, Sadupur, Ambala City.

BEFORE SHRI R.L. GUPTA, SOLE ARBITRATOR

IN THE MATTER OF ARBITRATION BETWEEN SHRI DEEPAK PARKASH
AND THE MANAGEMENT OF M/S ASHOKA ALOI STEEL (PRIVATE)
LIMITED, SADUPUR, AMBALA CITY

The above-said parties agreed to appoint me as an Arbitrator with regard to the following matters in dispute between the parties :—

- (1) Retrenchment Compensation, and
- (2) Case under Workmen Compensation Act of right foot thumb.

The said Arbitration Agreement was notified by the Government under section 10-A of the Industrial Disputes Act, and a copy was forwarded to me and the parties —, vide Notification endorsement No. ID/FD/77/31212-16, dated 29th August, 1977.

Before the Arbitration Agreement was published, both the parties approached me that the proceedings may be taken up in anticipation on the Government Notification and I advised them that they can forward their pleadings to each other and to me so, that the process of arbitration could be expedited immediately, after the Notification.

Parties, after the Notification, appeared before me on 16th September, 1977. On this date both the parties were heard and their point of view and the brief thereof was recorded with regard to the claim about retrenchment and the proceedings were adjourned for 18th September, 1977. Shri Deepak Parkash appeared on that day but no one appeared in behalf of the management. Shri Deepak Parkash appeared and stated that he had settled the case with the management according to, which he will be paid Rs 2,800 against all his claims. Since the management was not present and I could not take his statement to be final and I told the worker that in case the management do not accept the version then he desired that an award could be given by the Arbitrator. In support of his claim for accident compensation he relied upon the Medical Certificate already placed on record and showed that his right foot thumb was amputated. As a matter of fact the accident was not denied by the management in their pleadings. However the management had pleaded that they have paid full wages during the period of temporary employment, which were treated as leave and as per the statement filed he was paid excess leave to the tune of Rs. 610. The representative of the management later appeared before me and desired that an award can be given by me on the basis of legal requirements stating that the accident occurred in August, 1975 and at that time the quantum of compensation was much less. According to the management the enhanced rate of compensation through the amendment of the Compensation Act was brought into force from 1st October, 1975. They further desired that as per section 5 of the Workmen Compensation Act, monthly wages has to be taken as average of the last 12 months and not the last pay drawn. For the purpose he stated that the monthly average pay would be between Rs 200—300. Since the time of one month for deciding the case was to expire, there was no time left to call for the parties for further arguments and since the case was simple and the facts have been brought on the files, an award can be given on the basis of the facts without any further proceedings.

Therefore, after considering the facts placed on record and the version of the parties together with the legal position I held as under :—

(1) As per the pleadings and the statement of Shri Deepak Parkash made before me he has totally failed to make out the case that his termination of service in any manner amounted to retrenchment. As per his statement his service terminated by the management stating that his work was not satisfactory as he was wasting time unnecessarily. On the other hand the management version was that he applied for 2 days leave and thereafter did not report for duty. According to the management he was reverted back to the post of Clerk from the Melting Section before he proceeded on leave but he did not turn up and thus left service without notice. It is not the case of the workman that he was retrenched being surplus to requirements and therefore, the termination cannot be said to be retrenchment. In any case in view of my findings, that it was not a case of retrenchment. It is not necessary to give any findings as to whether the worker was removed on the basis of allegations stated by him or that he abandoned employment by way of absent as stated by the management. I, therefore, held that the worker is not entitled to any retrenchment Compensation.

(2) As regards the 2nd claims about compensation, as a result of accident, I have to be guided by the provisions of the Retrenchment Compensation Act, 1923, as also stated in the Arbitration Agreement itself.

It is a common case that the accident took place in the factory during the course of employment. The management had due notice of the accident. The workman remained under treatment of Dr. S.R. Khanna from 10th August, 1975 to 4th October, 1975. According to him whole of the great toe was fused and there was cent per cent disability of the toe. He however suggested for an operation. As per the 2nd certificate from Dr. P.A. Paul of Vail Nursing Home, Ambala City, the workman was admitted in the Nursing Home on 5th October, 1975 suffering from an infected bone of right great toe. He was operated on 13th October, 1975 when terminal Phalynx of the right toe which was necrosed removed. I have myself examined the great toe of the workman and found that there was truth in the certificate granted by Dr. P.A. Paul. There was therefore no necessity for the formal proving of the Medical Certificate, and the cause of action for the right of compensation would arise only after the amputation causing permanent disablement. On the other hand the management has pleaded and argued that the accident took place in the month of August, 1971, when the old schedule was applicable. The permanent disablement as a result of accident which took place earlier and therefore the revised schedule shall not be applicable. The management further stated that only the average monthly wages falling in the quantum of Rs. 200/- 300/- should be taken into consideration and not the wages last drawn. To this extent the management is right because of the provision of section 5 of the Workmen Compensation Act. It would also not make much difference while calculating the compensation.

I have tried to find out a case—Law on the subject but no proper authority could be located as the facts of this case were not identical in any earlier case. To my mind the right of compensation as a total or partial disablement accrues on amputation of a limb or declaration by medical authorities.

Once the fact of amputation of the great toe is proved then we have to see the extent of permanent disability. As per schedule I of the Workmen Compensation Act, the amputation of the great toe through metatarso-phalangeal joint amounts to 14 per cent disability. A note under the schedule is further given that complete and permanent loss of the use of my limb or member referred to in the schedule shall be deemed to be the equivalent of the loss of that limb or member. Accordingly there is 14 per cent permanent disablement to the workman. However at the time of accident the compensation payable for total disablement as per schedule 4 was raised through the Amendment Act of 1976 (Act No. 65 of 1976), through this amendment the disablement compensation was substantially enhanced and the Amendment is applicable from 1st October, 1975. In so far as the quantum of compensation is concerned, the case of the workman is that he should be paid compensation at revised rate as the permanent disablement arose due to the amputation of the limb in the month of October, 1975 permanent disablement shall accrue only when the permanent disablement occurs and not earlier. A workman may be cured of an accident and he would only be entitled to benefits of temporary disablement benefit. In this view I am further fortified from the fact that during temporary disablement a worker is to be paid half monthly payments as per schedule 4. It follows that during the months prior to October, 1975, the worker would be entitled to half monthly payments of the old rates but after 1st October, 1975 a workman having temporary disablement shall be entitled to half monthly payments on the basis of revised schedule and so the periods accruing after 1st October, shall automatically be entitled the workman to compensation at the revised rates in the schedule 4 through the Amendment Act No. 65 of 1976, and I hold accordingly. As per the schedule, a workman having total disablement in the wage group of Rs. 200—300/- would be entitled to Rs. 25,200. The compensation payable to Shri Deepak Parkash at the rate of 14 per cent of the above amount comes to Rs. 3,528. Out of this amount, the amount paid during temporary disablement has to be set off under section 4 of the Act. In the case the workman was paid full wages for the period of disablement but his leave due was adjusted. He was paid only a sum of Rs. 610 for which period no leave was due. Accordingly a sum of Rs. 610 is adjustable from the said amount. The balance payable comes to Rs. 2918.

The workman before me had stated that he had settled the matter at Rs. 2,800 in full and final settlement and therefore taking the said amount to be his consent I award that he should be paid Rs. 2800 as partial permanent disablement compensation under the Workmen Compensation Act. The award shall be enforceable on the expiry of 30 days of its publication in the Government Gazette.

R. L. GUPTA,

Labour Law Advisor/Sole Arbitrator.

Dated the 28th September, 1977.

The award, in triplicate, is forwarded to the Secretary to Government, Haryana, Labour Department, Chandigarh for publication in the Gazette.

R. L. GUPTA,

Sole Arbitrator.